

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF VERMONT**

TOTAL TEMPERATURE	:	
INSTRUMENTATION, INC.,	:	
Plaintiff,	:	
	:	
v.	:	Docket No. 1:03-cv-258
	:	
OMEGA ENGINEERING, INC.,	:	
Defendant	:	
	:	
v.	:	
	:	
TOTAL TEMPERATURE	:	
INSTRUMENTATION, INC. and	:	
RAYTEK CORPORATION	:	
Counterclaim	:	
Defendants	:	
	:	

RULING ON DEFENDANT'S MOTION TO DISMISS
(Paper 5)

Plaintiff, Total Temperature Instrumentation, Inc. ("TTI"), brought this contract action on September 23, 2003 against Omega Engineering, Inc. ("Omega"). Presently before the Court is Omega's Motion to Dismiss pursuant to Fed. R. Civ. P. 12(b)(6). (Paper 5) For the reasons discussed below, Omega's motion is DENIED.

BACKGROUND

In July 1989, TTI and Omega entered into a "Standard Purchase Agreement" ("the Agreement"), the terms of which are governed by the law of Connecticut. Under the Agreement, TTI agreed to furnish certain products to Omega for resale in

accordance with specified terms. (See Paper 1, ¶ 6) The Agreement required TTI to maintain specified levels of inventory of "OMEGA Custom Labelled" products in order to satisfy Omega's purchasing requirements, and the Agreement further prohibited TTI from selling some products to certain entities and from doing business with designated entities. (See id. at ¶¶ 8-9) The Agreement was to be self-renewing unless terminated according to its terms. (Id. at ¶ 7) In addition, the Agreement allowed Omega to terminate "for cause" after prior written notice. (Id. at ¶ 10)

In August 2003, Omega allegedly ceased buying products from TTI without adhering to the termination and notice provisions of the Agreement. (Id. at ¶ 11) At the time Omega ceased buying, TTI was preparing approximately \$122,947.20 worth of "OMEGA Custom Labelled" products and had an additional \$175,210.28 of Omega products in inventory. (Id. at ¶ 12) Omega has allegedly refused to pay for or accept any of these products and denied consent for TTI to sell these Omega-branded products on the open market. (Id. at ¶¶ 12-13)

TTI initiated this action under 28 U.S.C. § 1332(a)(1), alleging breach of contract (Count I) and breach of Connecticut's implied contract of good faith and fair dealing (Count II) and seeking both compensatory and punitive

damages.¹ Omega filed the present motion to dismiss pursuant to Fed. R. Civ. 12(b)(6) challenging the sufficiency of Counts I & II and the availability of punitive damages.

DISCUSSION

In deciding a Rule 12(b)(6) motion, a court must accept as true all of the allegations contained in the plaintiff's complaint and draw all reasonable inferences in its favor. See Burnette v. Carothers, 192 F.3d 52, 56 (2d Cir. 1999). The complaint should not be dismissed unless it appears beyond all doubt that the plaintiff can prove no set of facts in support of its claims that would entitle it to relief. Id.

At the Rule 12(b)(6) stage, the issue is not whether a plaintiff is likely to prevail ultimately, but whether the claimant is entitled to offer evidence to support its claims. Sims v. Artuz, 230 F.3d 14, 20 (2d Cir. 2000). Indeed it may appear on the face of the pleading that a recovery is very remote and unlikely, but that is not the test, Id. (citing Chance v. Armstrong, 143 F.3d 698, 701 (2d Cir. 1998)); instead, the Court's task "is merely to assess the legal feasibility of the complaint, not to assay the weight of the

¹ TTI also includes "Count III, Punitive Damages"; however, this is not a separate cause of action, and consequently the Court will construe this as the relief requested rather than a separate and independent claim. See Black's Law Dictionary 348 (6th ed. 1990) (defining "count" as a "separate and independent claim.").

evidence which might be offered in support thereof.” 230 F.3d at 20 (citing Ryder Energy Distrib. Corp. v. Merrill Lynch Commodities Inc., 748 F.2d 774, 779 (2d Cir. 1984)). In assessing the legal feasibility of the complaint, the Court may consider documents that are incorporated into the complaint by reference or attached to the complaint as exhibits, or whose terms and effects are relied upon by the plaintiff in drafting the complaint. See Chambers v. Time-Warner, Inc., 282 F.3d 147, 152-54 (2d Cir. 2002). Thus, the Court may look to the Agreement notwithstanding TTI’s election not to attach it to the complaint.²

Count I

In order to state a breach of contract claim, one must allege (1) formation of an agreement; (2) performance by one party; (3) breach of the agreement by the other party; and (4) damages. Timmons v. City of Hartford, 283 F. Supp. 2d 712, 718 (D. Conn. 2003). With the formation of the agreement not at issue, TTI satisfies this standard by basing its claim on Omega’s alleged failure to adhere to the notice of termination provisions (See Paper 1, ¶¶ 10-16, 21) and wrongful rejection of goods (See id. at ¶ 12) which allegedly

² The Court notes TTI’s attempt to move to strike certain material from the record by way of a footnote in its opposition (See Paper 12, n. 1) and recommends filing a properly supported motion to strike if TTI would like the Court to visit this issue.

resulted in damages. (See id. at ¶ 16)

In asserting a breach of contract claim, the complaint must allege the provisions of the contract upon which the claim is based. Timmons, 283 F. Supp. 2d at 718. By citing the termination and notice provisions, TTI adequately alleges the provisions underlying Count I. Consequently, TTI states a claim for breach of contract.

Count II

____ Under Connecticut law, “every contract carries an implied covenant of good faith and fair dealing requiring that neither party do anything that will injure the right of the other to receive benefits of the agreement.” Gupta v. New Britain Gen. Hosp., 239 Conn. 574, 598 (1996). In order to establish a claim for breach of the implied covenant of good faith and fair dealing, one must show “bad faith,” which involves a “dishonest purpose.” See id. In general, “bad faith” implies both actual or constructive fraud, or a design to mislead or deceive another, or a neglect or refusal to fulfill some duty or some contractual obligation, not prompted by an honest mistake as to one’s rights or duties, but by some interested motive. Habetz v. Condon, 224 Conn. 231, 237 (1992).

TTI bases Count II on Omega’s alleged “bad faith” and “reckless and wanton indifference” to TTI’s known rights. (See Paper 1, ¶ 21) Because TTI alleges Omega refused to

fulfill a contractual obligation and that this refusal was not prompted by an honest mistake but rather by bad faith, TTI sufficiently states a claim under Count II.

Punitive Damages

Under Connecticut law, punitive damages, unless otherwise abrogated by statute, are limited to an amount which will serve to compensate the plaintiff to the extent of his litigation expenses less taxable costs. Uberti v. Lincoln Nat'l Life Ins., 144 F. Supp. 2d 90, 107 (D. Conn. 2001). Punitive damages are not ordinarily available in a contract action, unless malicious, willful or reckless conduct is alleged. Gen. Elec. Capital Corp. v. DirecTV, Inc., 94 F. Supp. 2d 190, 202 (D. Conn. 1999) (citing City of Hartford v. Int'l Ass'n of Firefighters, 49 Conn. App. 805, 817 (1998)). Here, TTI alleges a "willful" and "reckless" breach of contract by Omega. (See Paper 1 at ¶ 25) Accordingly, dismissal of the punitive damages request at this time would be premature.

CONCLUSION

For the reasons discussed herein, Defendant's Motion to Dismiss is DENIED.

SO ORDERED.

Dated at Brattleboro, Vermont this ____ day of February,
2004.

J. Garvan Murtha, U.S. District Judge